

January 23, 2009

**Testimony by Matthew B. Thiel before the  
Appropriations/Finance and Claims Joint Subcommittee,  
Judicial Branch, Law Enforcement, and Justice**

**RE: Office of the State Public Defender  
Budget Request for 2011 Biennium for a  
Public Defender Career Ladder**

543-1550

I am legal counsel for AFSCME Montana Council 9 and was the lead negotiator for AFSCME Local 3448, which represents the Public Defenders employed by the State Office of the Public Defender. The purpose of this testimony is to request that this subcommittee reinstate funding into the OPD Budget for a career ladder for public defenders. This was funding based on an agreement between the Public Defenders Union and OPD and was included in the Governor's original budget. As I will explain, this is a priority because the public defenders are the lowest paid attorneys in the State because of the way in which this new agency was originally funded.

I am providing you a packet that includes the following information tabbed as follows:

1. Agreement between OPD and AFSCME, Establishing a Public Defender Career Ladder.
2. 2007 OPD Pay Study.
3. OPD Budget Request and Narrative, Decision Package No. 5.
4. LFD Budget Analysis of Decision Package No. 5.

The Public Defenders Union along with representatives of the OPD and Montana Public Defender Commission negotiated an Agreement that included a proposed career ladder for public defenders, which was part of the OPD's budget request to the Governor's office for the 2011 biennium.

The Public Defender Commission submitted a budget proposal to the Governor's office in May that included funding for this Agreement, which was entitled Attorney Labor Union Career Ladder Pay Schedule (Decision Package NO. 5).

This decision package requested personal services funding in the amount of **\$282,228 in FY 2010** and **\$470,743 in FY 2011**.

The Governor's Budget Office originally recommended that the OPD decision package be included in the budget at a level of **\$141,000 in FY10** and **\$235,000 in FY11**, which represents 50% of the funding requested for the parties' agreement to establish a career ladder for public defenders. This is referenced as Decision Package No. 5 in the LFD budget analysis. As you know, this amount was later eliminated in the Governor's revised budget submission.

I am here today to request that the OPD Budget, which is being heard today, be restored to include the Decision Package No. 5, which would provide ½ funding for the public defender career ladder (as proposed by the Governor's original budget).

As part of this request, I want to briefly share some background with regard to how the agreement regarding the career ladder was developed to explain why this particular budget request differs from others and deserves priority as you make difficult decisions regarding the budget.

Because there are always new and growing needs in State government, we often face the reality of prioritizing those needs. Funding of the OPD career ladder for public defenders is a legitimate priority in the budget for the 2009 Legislature for several reasons.

First, the budget proposal for the career ladder was arrived at after extensive negotiations (Tab 1). The funding amounts were not picked as a starting point for negotiations with the Legislature, but were the result of a careful pay study and detailed negotiations directed at solving specific problems relative to public defender pay. The OPD recognized the very real need of keeping public defender pay competitive with a changing market and establishing a realistic progression to retain attorneys in the public defender system. For example, public defenders' pay does not compare well with other state employed attorneys and, according to a recent Job Frequency Report from the Department of Administration, attorneys employed by OPD are the lowest paid of any State agency and many have now fallen below 80% of the market rate for Pay Band 7, according to DOA. OPD has a demonstrated difficulty with retention and hiring of qualified attorneys to run the system. For example, a position has been open in Havre since July 2006.

Second, the Office of the State Public Defender was a new agency created by the 2005 Legislature. Pursuant to this Act, all County public defenders became State employees of the Office of the State Public Defender effective July 1, 2006. While this much was clear at the time, the number of public defenders actually

needed to staff the system, were not accurately reflected in early budget projections. Further, public defenders were inaccurately placed in Pay Band 6 to estimate payroll costs. Next, OPD was not fully staffed at accurate salary levels when the July 1, 2006 budget snapshot was taken. These factors and others created a situation where the baseline OPD budget was inadequate to serve even current needs at the time. While AFSCME and the OPD immediately began negotiations in July 2006, and these factors were discussed during negotiations in 2006 and 2007, it was already too late to address these issues during the 2007 Legislature. This legislative session presents the first opportunity public defenders have to address the inequities in pay that were built in to the agency's budget as discussed above.

Next, with regard to the pay study that is referenced in the OPD's narrative, it is important to note that the pay study is based on 2007 market data (Tab 2). When we began negotiations with the OPD, Union and State representatives realized the State's pay data with regard to attorneys was inadequate to use as an accurate market study for public defenders. Accordingly, the parties agreed to a new pay study that focused solely on County, City and State prosecuting attorneys doing similar work in Montana. The data contained in that market survey was from 2007. Further, the most current report from the Department of Administration (January 2009) shows that public defender pay has slipped in terms of competitiveness with other State employees.

This leads to two observations with regard to the above-referenced budget request: 1) that the request is reasonable given that it is asking for funding to make public defender pay more competitive based on 2007 market information; and 2) that the proposal is aimed at addressing a problem built into the original OPD budget so that OPD attorneys are properly classified and placed on a fair pay system before application of general state employee pay rules. This distinguishes public defenders from all other state employees, employed by long standing state agencies. If this problem is not addressed during this legislative session, the pay disparity of public defenders will become critically worse.

We do appreciate your work on behalf of the State during this difficult time, but ask that the decision package for personal services for the public defender career ladder (DP No. 5) be reinstated in the OPD budget for FY10 and FY11. In the larger scope, this represents a small amount of the State's overall budget and is a solution targeted to fix a specific problem that will not exist in coming bienniums if appropriately addressed now. If this issue is not addressed during this session, it will only become more difficult to run the agency. For these reasons, we respectfully request your assistance in addressing this problem.

# **ATTACHMENT**

**1**

# **2010-11 Pay Plan Negotiations** **Office of the State Public Defender and** **AFSCME Council 9**

## Movement from Market to Maximum Plan For the Executive Planning Process (EPP)

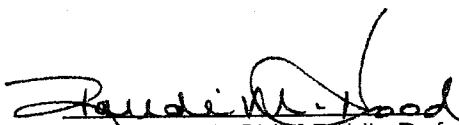
1. It is the goal of OSPD and the Union to advance employees from Market to Maximum in the pay range. Further, the parties agree to work in good faith to seek necessary funding through the 2009 legislative process.
2. The Union recognizes that the employer's ability to seek funding for the economic benefits below must be submitted to the Executive Planning Process (EPP) prior to April 17, 2008. Both parties understand and recognize that this plan can be changed in part or rejected in full at any stage of the EPP.
3. This plan in no way binds either party unless funding and spending authority are approved for the 2010 – 2011 biennium. In the event the 2009 Legislature does not fully fund the parties' pay plan as set forth in this agreement, the parties recognize they will need to renegotiate either the proposed plan and/or distribution of available funds.
4. Employees who are licensed, in good standing, and have more than 5 years relevant experience will be moved from market to maximum by the complexity of cases, level of expertise, and years of service with OSPD. The parties agree to the following Market to Maximum plan for the 2010-2011 biennium:

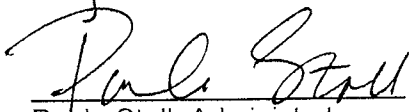
<b>Market to Maximum Plan for Biennium 2010-2011</b>			
<b>Years experience</b>	<b>Pay band</b>	<b>All Cases</b>	<b>Homicides</b>
6 and above	7	\$60,114	
7 and above	7	\$61,464	\$62,679
8 and above	7	\$62,814	\$65,291
9 and above	7	\$64,164	\$67,902
10 and above	7	\$65,514	\$70,514

5. The salary figures referenced above in the Market to Maximum plan are derived from the 2007 market study conducted by the parties. The salary figures are subject to change upon approval of a subsequent market study.

6. The OSPD will develop a budget proposal for the EPP based upon this agreement. In doing so, OSPD will prepare cost-out worksheets based on actual employees of the SOPD at this time. The OSPD will use this information to develop a budget proposal for submission to the 2009 Legislature that is as accurate as possible based on the intent of the parties as reflected in this agreement. The parties recognize, however, that any cost-out or worksheet information or data is for budget development purposes only and does not constitute a guarantee of actual pay any individual is entitled to or will receive for the 2010-2011 biennium. The parties recognize that any distribution of pay plan funds, based upon this agreement, will be subject to collective bargaining between the parties for the 2009 contract.
7. The parties recognize that Section 5(6) Relevant Experience of the 2007-2009 pay plan addendum will affect the cost-out of the OSPD's budget proposal as reflected in this agreement, and therefore, agree that, for the purposes of the 2010-2011 biennium budget proposal, relevant experience will be capped at 6 years, rather than 5 years as indicated in the current pay plan addendum Section 5(6).
8. The parties agree to develop a review and appeal process for employees who disagree with their placement on the pay plan and wish to have it reviewed for possible modification. Upon ratification of this agreement, this issue will be referred to the Labor Management Committee for the purpose of ensuring that a procedure will be complete and in place in time for implementation of the 2009-2010 contract years.

FOR THE STATE:

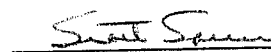
  
Randi Hood, Chief Public Defender

  
Paula Stoll, Administrator  
State Human Resources Division

FOR THE UNION:

  
Matt Thiel, Spokesman

  
Executive Director  
AFSCME Council 9

  
Bargaining Team member

  
Bargaining Team Member

# **ATTACHMENT**

**2**

# General Employee Information - June 13, 2007

Agency	Job Title	Grade Band	Base Pay	Total Comp Rate	Hire Date	Current Date	Years of Service
1 Cascade Co	Attorney		\$ 19.47	\$ 40,498	5/16/2005	6/13/2007	2.1
2 Cascade Co	Attorney		\$ 20.19	41,995	1/26/2004	6/13/2007	3.4
3 Cascade Co	Attorney		\$ 20.80	43,264	10/3/2005	6/13/2007	1.7
4 Cascade Co	Attorney		\$ 23.80	49,504	2/24/2003	6/13/2007	4.3
5 Cascade Co	Attorney		\$ 23.80	49,504	8/2/2000	6/13/2007	6.9
6 Cascade Co	Attorney		\$ 24.76	51,501	9/8/2003	6/13/2007	3.8
7 Cascade Co	Attorney		\$ 24.76	51,501	8/18/1999	6/13/2007	7.8
8 Cascade Co	Attorney		\$ 27.64	57,491	6/15/1998	6/13/2007	9.0
9 Cascade Co	Attorney		\$ 32.18	66,934	1/9/1995	6/13/2007	12.4
10 City of Billings	Criminal Deputy City Attorney		\$ 32.70	68,016	11/12/2003	6/13/2007	3.6
11 City of Billings	Criminal Deputy City Attorney		\$ 32.73	68,078	2/2/2004	6/13/2007	3.4
12 City of Billings	Civil Deputy City Attorney		\$ 36.08	75,046	10/31/2001	6/13/2007	5.6
13 City of Billings	Criminal Deputy City Attorney		\$ 36.08	75,046	11/27/2000	6/13/2007	6.5
14 City of Billings	Criminal/Civil Deputy City Attorney		\$ 36.08	75,046	12/2/1996	6/13/2007	10.5
15 City of Helena	Deputy City Attorney		\$ 20.51	42,661	8/13/2006	6/13/2007	0.8
16 City of Helena	City Prosecutor		\$ 28.23	58,718	6/13/1995	6/13/2007	12.0
17 Flathead Co	Criminal/Civil Attorney		\$ 22.33	46,440	6/1/2007	7/1/2007	0.1
18 Flathead Co	Criminal Attorney		\$ 24.31	50,569	7/1/2005	7/1/2007	2.0
19 Flathead Co	Criminal/Civil Attorney		\$ 24.81	51,600	7/1/2003	7/1/2007	4.0
20 Flathead Co	Criminal/Civil Attorney		\$ 25.30	52,632	7/1/2003	7/1/2007	4.0
21 Flathead Co	Criminal Attorney		\$ 25.48	52,991	7/1/2001	7/1/2007	6.0
22 Flathead Co	Civil Attorney		\$ 25.57	53,194	7/1/1998	7/1/2007	9.0
23 Flathead Co	Attorney		\$ 36.52	75,962	7/1/1984	7/1/2007	23.0
24 Gallatin Co	DEPUTY ATTORNEY		\$ 22.84	47,507	10/1/2006	6/13/2007	0.7
25 Gallatin Co	DEPUTY ATTORNEY		\$ 22.84	47,507	8/1/2005	6/13/2007	1.9
26 Gallatin Co	DEPUTY ATTORNEY		\$ 22.84	47,507	8/1/2005	6/13/2007	1.9
27 Gallatin Co	DEPUTY ATTORNEY		\$ 24.28	50,502	6/1/2005	6/13/2007	2.0
28 Gallatin Co	DEPUTY ATTORNEY (CIVIL)		\$ 26.44	54,995	6/1/2001	6/13/2007	6.0
29 Gallatin Co	DEPUTY ATTORNEY		\$ 29.57	61,506	8/1/1998	6/13/2007	8.9
30 Gallatin Co	DEPUTY ATTORNEY		\$ 29.81	62,005	8/1/2001	6/13/2007	5.9
31 Lewis & Clark	Attorney		\$ 25.81	53,685	4/13/2004	7/1/2007	3.2
32 Lewis & Clark	Attorney		\$ 31.42	65,354	9/6/1994	7/1/2007	12.8
33 Lewis & Clark	Attorney		\$ 31.42	65,354	4/4/1988	7/1/2007	19.3
34 Missoula Co	Criminal Attorney		\$ 22.16	46,093	10/23/2006	7/1/2007	0.7
35 Missoula Co	Criminal Attorney		\$ 22.16	46,093	3/17/2005	7/1/2007	2.3
36 Missoula Co	Criminal Senior Attorney		\$ 29.25	60,840	12/31/2006	7/1/2007	0.5
37 Missoula Co	Civil Senior Attorney		\$ 28.98	60,278	5/14/2007	7/1/2007	0.1
38 Missoula Co	Criminal Senior Attorney		\$ 29.49	61,339	10/16/2000	7/1/2007	6.7
39 Missoula Co	Civil Attorney		\$ 30.02	62,442	6/20/1980	7/1/2007	27.0
40 Missoula Co	Civil Senior Attorney		\$ 32.22	67,018	11/17/1998	7/1/2007	8.6
41 Missoula Co	Criminal Senior Attorney		\$ 32.22	67,018	1/19/1999	7/1/2007	8.5
42 Missoula Co	Civil Senior Attorney		\$ 34.59	71,947	2/1/1991	7/1/2007	16.4
43 Missoula Co	Civil Senior Attorney		\$ 36.08	75,046	1/9/1989	7/1/2007	18.5
44 Missoula Co	Civil Senior Attorney		\$ 39.06	81,245	1/21/1985	7/1/2007	22.5
45 Ravalli County	Attorney		\$ 26.19	54,479	5/1/2001	6/13/2007	6.1
46 Ravalli County	Attorney		\$ 25.33	52,693	11/1/2002	6/13/2007	4.6
47 Ravalli County	Attorney		\$ 25.20	52,418	8/1/2000	6/13/2007	6.9
48 Ravalli County	Attorney		\$ 24.52	51,000	3/1/2007	6/13/2007	0.3
49 Yellowstone	Senior County Attorney		\$ 22.72	47,258	8/29/2003	6/13/2007	3.8
50 Yellowstone	Senior County Attorney		\$ 25.96	53,997	10/7/1996	6/13/2007	10.7
51 Yellowstone	Senior County Attorney		\$ 27.16	56,493	8/1/2002	6/13/2007	4.9
52 Yellowstone	Senior County Attorney		\$ 29.81	62,005	3/5/2001	6/13/2007	6.3
53 Yellowstone	Senior County Attorney		\$ 31.24	64,979	10/5/1999	6/13/2007	7.7
54 Yellowstone	Senior County Attorney		\$ 31.49	65,499	8/31/1998	6/13/2007	8.8
55 Yellowstone	Senior County Attorney		\$ 31.49	65,499	8/24/1998	6/13/2007	8.8
56 Yellowstone	Senior County Attorney		\$ 32.73	68,078	3/1/1999	6/13/2007	8.3
57 Yellowstone	Senior County Attorney		\$ 32.99	68,619	4/20/1998	6/13/2007	9.2
58 Yellowstone	Senior County Attorney		\$ 33.53	69,742	3/20/2000	6/13/2007	7.2
59 Yellowstone	Senior County Attorney		\$ 33.53	69,742	5/8/1995	6/13/2007	12.1
60 Yellowstone	Senior County Attorney		\$ 33.53	69,742	1/23/1995	6/13/2007	12.4
Total				\$ 3,525,717		Count:	60
Average				\$ 58,762			



# **ATTACHMENT**

**3**



Brian Schweitzer  
Governor

# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender  
Randi Hood

## **Attorney Labor Union Career Ladder Pay Schedule - Narrative**

- This decision package is for Program 1's unionized attorney group represented by the American Federation of State, County, and Municipal Employees (AFSCME). The decision package requests personal services funding in the amount of \$282,228 in FY 2010 and \$470,743 in FY 2011.
- During FY 2008, a pay study was conducted by a group of individuals comprised of representatives from agency management, state personnel management, attorneys in the union, and union representatives from AFSCME. The study contained the pay levels for certain county, city, and state attorneys doing similar work during FY 2007. The similar positions were held by county and city prosecutors, certain attorneys at the Department of Justice, and certain attorneys at the Department of Corrections. Information was provided by either individuals employed in human resource positions or by public information in the state's employee systems.
- The salary information was used to develop the average market rate of \$58,762. This amount was used to develop an entry level of pay of \$47,010 (20% below market) and a top level of pay of \$70,514 (20% above market). Pay band seven was used to classify the attorney positions based on defined job duties.
- The agency has negotiated and signed the Collective Bargaining Agreement between the agency and AFSCME. The agency has also negotiated and signed two addendums to this agreement. The first provides for the placement, adjustment and progression of pay of union attorneys from entry level of \$47,010 to a market level of pay of \$58,762. This progression is predominantly based on years of service. The second addendum provides for the progression above market to the maximum of \$70,514. This progression is based on an attorney's years of service and complexity of case work.
- The agency has made no commitment to pay attorneys at these pay levels unless it is funded by the legislature.
- Market information for 2006 for attorneys released by the state showed that the minimum in pay band 7 for an attorney was \$52,070 and that market is \$65,088. Information for 2008 showed that the minimum in pay band 7 for an attorney was \$58,465 and that market is \$73,082. The pay levels in the union/agency pay study noted above are considerably below the state's market studies for both. It is the agency's desire to develop a long term plan to move attorneys to the pay levels that are reflected in the state's pay study in order to place the agency on the same playing field with other state agencies and county and city entities that employ positions of this nature.

OFFICE OF THE STATE PUBLIC DEFENDER  
ATTORNEY CAREER PAY LADDER

		ANNUAL UNFUNDED \$	
		<u>FY 2010</u>	<u>FY 2011</u>
		<u>Pay Table</u>	
I	No License	\$ 40,000	\$ -
II	Licensed & in Good Standing:		
	Less than 2 years	\$ 43,392	\$ -
	Between 2 and 3 years	47,010	6,081
	Between 3 and 4 years	50,927	24,105
	Between 4 and 5 years	54,844	19,844
	Five years and more	58,762	61,166
III	Licensed & in Good Standing		
	Based on complexity of cases, level of exp., & yrs of service:		
	<u>All Cases</u>		
	Six years and above	\$ 60,114	\$ 19,876
	Seven years and above	61,464	15,602
	Eight years and above	62,814	18,884
	Nine years and above	64,164	8,617
	Ten years and above	65,514	-
	<u>Complex Cases (Homicide, etc)</u>		
	Seven years and above	\$ 62,679	\$ 4,039
	Eight years and above	65,291	36,895
	Nine years and above	67,902	67,119
	Ten years and above	70,514	-
IV	Total Unfunded Amounts by Fiscal Year	\$ 282,228	\$ 470,743

# **ATTACHMENT**

**4**

**LFD  
ISSUE****Lack of Measurable Outcomes**

The agency has not provided any measurable outcomes so that the legislature can determine if and how provision of funding for this item results in a desirable result or progress toward a goal. The legislature may wish to discuss with the agency what measures can be used to determine the impact of any increase in the contract attorney rate.

**LFD  
COMMENT**

The agency expended about \$5.6 million in FY 2008 for contracted public defender services. Of this amount about \$5.1 million is included in the base budget for the 2011 biennium. The balance was funded with a one-time-only appropriation and thus is not included in the base budget.

The 2011 biennium budget request approved by the Public Defender Commission on April 18, 2008 included an increase in contract attorney rates from \$60 to \$75 per hour in FY 2010 and an increase of about 2.7 percent between FY 2010 and 2011. The estimated cost of this proposal was \$2,990,602 for the biennium.

DP 5 - Union Career Ladder Pay Increases - This decision package requests general fund of \$141,114 in FY 2010 and \$235,372 in FY 2011 to implement a progression pay increase for unionized attorneys. A pay study was conducted as specified in the collective bargaining agreement and identified a market rate for attorneys (for the 2009 biennium) of \$58,762, with an entry level of pay of \$47,010 and maximum pay level of \$70,514. Additionally, pay increments for movement from entry to the market level of pay and from market level to the maximum pay level were developed. The provisions included in the collective bargaining agreement advance attorneys in good standing from entry level to market for their positions over a five year time period. Advancement from market to the maximum pay for the position would be based upon years of experience and complexity of cases assigned to the attorneys. Attorneys with complex cases and 10 or more years of relevant experience would be paid at the maximum pay rate for the position. The collective bargaining agreement also specifies that the agency will develop a budget proposal for submission to the 2009 Legislature and that parties will work in good faith to seek the necessary funding.

DP 6101 - Fixed Cost Workers Comp Management Program Alloc - The Workers' Compensation Management program at the Department of Administration was funded by the 2007 Legislature with a one-time-only general fund appropriation. For the 2011 biennium and beyond, the executive proposes the program be funded via a fixed cost allocation. The allocation is based upon the average number of payroll warrants issued per pay period. Because the program was approved as an OTO for the current biennium, it must be presented as a new proposal for the next biennium. Therefore, the allocation cannot be included as part of the standard present law fixed cost process.